

**Ohio Coastal Nonpoint Pollution Control Program
Analysis of Finding that State has Satisfied All Conditions of Approvability
(i.e., Full Approval Decision)**

I. INTRODUCTION

The Coastal Nonpoint Pollution Control Program, set forth in Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990, 16 U.S.C. § 1455b, addresses nonpoint source pollution problems in coastal waters. Section 6217 directs states and territories with approved coastal zone management programs to develop coastal nonpoint programs to implement management measures for nonpoint source pollution control, for the purpose of restoring and protecting coastal waters. Only coastal states that choose to participate in the National Coastal Zone Management Program pursuant to Section 306 of the Coastal Zone Management Act (CZMA) are required to implement coastal nonpoint pollution programs (or coastal nonpoint programs) under section 6217 of the CZARA.

Section 6217 is jointly administered by the National Oceanic and Atmospheric Administration (NOAA) and the United States Environmental Protection Agency (EPA) (collectively, Federal agencies). On January 19, 1993, EPA issued technical guidance to assist states in designing coastal nonpoint programs. This document, titled *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*, 840-B92-002 (January 1993), addresses five major source categories of nonpoint pollution: (1) urban runoff, (2) agriculture runoff, (3) forestry runoff, (4) marinas and recreational boating, and (5) hydromodification. The guidance also addresses nonpoint source pollution issues associated with the loss or damage to wetlands and riparian areas.

In March 1996, NOAA published a programmatic environmental impact statement (PEIS) that assessed the environmental impacts associated with the approval of state and territory coastal nonpoint programs pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*. The PEIS forms the basis for the environmental documents NOAA is preparing on each state and territorial coastal nonpoint program submitted for approval. In the PEIS, NOAA determined that the full approval and approval, with conditions (i.e., “conditional approval”) of coastal nonpoint programs will not result in any significant adverse environmental impacts and that these actions will have an overall beneficial effect on the environment.

On September 28, 2001, NOAA and EPA issued an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the approval, with conditions, of Ohio’s coastal nonpoint program for public comment (66 FR 49643). On June 4, 2002, NOAA and EPA approved the Ohio coastal nonpoint program, with conditions (67 FR 38471). For the conditional approval findings, see https://coast.noaa.gov/data/czm/pollutioncontrol/media/6217oh_fnl.pdf.

Since that time, Ohio has undertaken a number of actions to address each of the identified conditions. Based on those actions and the materials provided by the State that document how its program meets each condition, on November 3, 2021, NOAA and EPA published a notice and request for public comment on the proposed finding that Ohio has satisfied all conditions of approvability on its coastal nonpoint program (86 FR 60616).

II. BACKGROUND

Pursuant to CZARA, state coastal nonpoint programs must contain the following components:

- Coordination with existing state programs
- Determination of the state's coastal nonpoint management area
- Determination of critical coastal areas
- Processes for the implementation of 6217(g) management measures
- Identification and implementation of additional management measures
- Technical assistance
- Public participation
- Administrative coordination
- Identification of enforceable policies and mechanisms

Of these requirements, the development of processes that provide for the implementation of 6217(g) measures is the most detailed and complex component. Management measures are defined as "economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives." 16 U.S.C. § 1455b(g)(5). States are required to develop programs and processes to implement 56 management measures. The management measures address five categories of nonpoint source pollution: Agriculture, Forestry, Urban Areas, Marinas and Boating, and Hydromodification. Management measures also address the protection and restoration of wetlands and riparian areas. State programs must also provide for the implementation of "additional management measures... that are necessary to achieve and maintain applicable water quality standards and protect designated uses." § 1455b(b)(3).

Should a state fail to submit an approvable program, NOAA and EPA are both required, by statute, to withhold 30 percent of a state's CZMA 306 funds and Clean Water Act (CWA) 319 funds. § 1455b(c)(3)-(4). In recognition of challenges states faced in developing programs, NOAA and EPA developed a policy for approvals, with conditions, whereby the penalty provision of section 6217 will be suspended during the conditional approval period.¹ In the March 1996 PEIS, three alternatives were analyzed: approval, approval with conditions, and program disapproval (i.e., finding that a state had failed to

¹ Final Administrative Changes to Coastal Nonpoint Pollution Control Program Guidance, Oct. 16, 1998 (proposed March 12, 1998).

submit an approvable program). Under program disapproval, the state would be subject to the penalty provisions.

In the PEIS, NOAA concluded that both the full approval, and approval, with conditions, of coastal nonpoint programs in general would have beneficial effects on the physical and biological environment associated with reduced nonpoint sources of pollution, improved water quality, and enhanced recreational opportunities. The PEIS noted that there might be some slight and localized positive and negative socioeconomic effects as with management measure implementation and behavior changes to reduce nonpoint sources of water pollution, but adverse environmental impacts would not be significant (NOAA 1996). After preparing a programmatic NEPA document, such as a PEIS, federal agencies may "tier" from the programmatic analysis to a narrower analysis of a specific project, policy, or program (pursuant to 40 C.F.R. §§ 1502.20 and 1508.28). The PEIS stated that approval of each state coastal nonpoint program would be analyzed in an EA that would be tiered from the PEIS. The tiered EAs refer back to the PEIS, and they focus on the characteristics and issues ripe for discussion when agencies consider a related action.

NOAA completed a tiered EA for the Ohio Coastal Nonpoint Pollution Control Program in 2001, which analyzed the alternatives of approving the program fully, approving the program with conditions, and denying approval of the program (i.e., finding the program had failed to submit an approval program, or no approval). The EA concluded that both full approval, and approval with conditions, of the Ohio coastal nonpoint program would not result in any significant environmental impacts in Ohio different from those analyzed in the PEIS and would have primarily beneficial effects on the environment. Further, the EA indicated that approval, with conditions, would have the same or greater benefits as full approval, by encouraging Ohio to strengthen its coastal nonpoint program to satisfy the conditions while maintaining full CZMA and CWA funding, provided that Ohio later satisfied the conditions. The EA concluded that no action, or no approval, would have negative environmental impacts because the program would risk loss of 30 percent of its Section 306 coastal zone management funding and Section 319 CWA funding. Based on the results of the analysis, NOAA issued a Finding of No Significant Impact (FONSI). NOAA and EPA found that the proposed Ohio Coastal Nonpoint Program qualified for approval, with conditions. No comments were received when the EA, FONSI, and proposed findings were published and made available for public comment.

On July 16, 2020, the Council for Environmental Quality (CEQ) finalized new NEPA regulations that became effective on September 14, 2020 (85 FR 43304). Under the new regulations, 40 C.F.R. § 1506.13 (2020), the new regulations apply to all NEPA processes "begun after the effective date, but agencies have the discretion to apply them to ongoing NEPA processes." NOAA and EPA published the proposed findings on June 15, 2020, and commenced preparing this NEPA Adequacy review before publication of the proposed findings. Likewise, this Adequacy review relies on NEPA documents also prepared in 1996 (PEIS) and 1998 (EA), well before the effective date. As such, NOAA had determined it is appropriate to rely on the CEQ regulations in place prior to the July 16, 2020, rulemaking.

III. Analysis

Under NEPA, an EIS or EA must be supplemented and re-circulated for public comment if, in pertinent part, "[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns" or "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 CFR § 1502.9(c). The courts have further interpreted this threshold for supplementation as fairly high and subject to a rule of reason, such as where "new information must provide a seriously different picture of the environmental landscape such that another hard look is necessary." *Wisconsin v. Weinberger*, 745 F.2d 412, 418 (7th Cir. 1984), or if the new information is sufficient to show that the remaining action will affect the environment "in a significant manner or to a significant extent not already considered." *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 373-74 (1989). In this analysis, we compare the proposed action to the alternatives analyzed in the PEIS and EA, and examine the new information, to determine if supplemental analysis under NEPA is required prior to full approval of the Ohio Coastal Nonpoint Program (i.e., finding that the state has satisfied all conditions of approvability on its program).

CHANGES TO THE PROPOSED ACTION

The proposed action is the same as that analyzed in the EIS and EA, which is to make a decision on a state's coastal nonpoint program. The preferred alternative (full approval, i.e., finding that a state has satisfied all conditions of approval on its program) and the state's coastal nonpoint program, however, have changed. This section discusses how the preferred alternative and Ohio's Coastal Nonpoint Program has changed relative to the environmental impact analysis in the PEIS and EA.

The preferred alternative from the EA completed in 2001 was approval, with conditions, of the Ohio Coastal Nonpoint Program. The approval was granted on June 4, 2002. NOAA and EPA put several conditions on Ohio's program related to new and existing development, watershed protection, marinas and recreational boating, onsite disposal systems, local roads, highways, and bridges, hydromodification, wetlands and riparian areas, and monitoring. More information regarding the specific conditions that were placed on Ohio's program can be found in NOAA and EPA's 2002 findings document on Ohio's Coastal Nonpoint Program (available on NOAA's Coastal Nonpoint Program website at https://coast.noaa.gov/data/czm/pollutioncontrol/media/6217oh_fnl.pdf).

The preferred alternative at this time is finding that Ohio has satisfied all conditions of approvability on its program (i.e., full approval). Full approval was analyzed in both the PEIS and the Ohio EA. Since the publication of the Ohio EA, Ohio better articulated how its existing programs and authorities address the 6217(g) management measures and further strengthened other parts of its coastal nonpoint program. While the program designed to meet the management measures is more fully developed, the proposed finding that Ohio has satisfied all conditions of approvability on its program simply confirms that Ohio has developed a program containing management measures

necessary to achieve and maintain applicable water quality standards and protect designated uses. As such, the proposed action has not changed in a way that affects the environmental impacts analysis or conclusions contained in the EA. Some particular management measures are discussed below for illustration purposes. A full description of the updates to the State's coastal nonpoint program may be found in the proposed findings.

For example, Ohio has met the new development management measure through requirements to control post-construction stormwater runoff that are included in its general National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges associated with construction. The State no longer needs to submit a legal opinion and supporting documentation as stated in the 2002 condition placed on its coastal nonpoint program because Ohio now addresses the new development management measure through direct permitting authorities and no longer relies on back-up authorities for this management measure.

Outside of the NPDES permit, Ohio addresses its condition for the new development management measure through its Rainwater and Land Development Manual, which describes post-construction best management practices that are consistent with the 6217(g) management measure. Ohio revised this manual in 2018 to align with the State's 2018 construction stormwater general permit noted above.

Ohio also promotes post-development runoff controls through its Balanced Growth Best Local Land Use Practices Toolkit. The toolkit encourages localities to control the post-development peak rate of runoff up to the critical storm (e.g., 5-year, 24-hour) so that the peak discharge from more frequent storm events including the critical storm does not exceed the pre-development peak discharge from the 1-year, 24-hour duration storm event. Ohio also offers very low interest loans to install low impact development (LID) and other stormwater management practices. These loans are substantially directed at projects that help implement approved watershed action plans and total maximum daily loads (TMDLs).

Ohio satisfies the planning, siting and developing roads, highways and bridges management measures for local roads through a mix of regulatory and voluntary requirements such as its stormwater construction general permit, Rainwater and Land Development Manual, the Ohio Department of Transportation's (ODOT) Location and Design Manual, and Local Transportation Assistance Program (LTAP). ODOT's Location and Design Manual and LTAP, and other efforts such as ODOT's integrated vegetation and management and adopt-a-litter programs also support the operation and maintenance management measure. Ohio developed a long-term strategy to identify and implement priority projects to address polluted runoff from existing local roadways to address the runoff systems management measure and provided a legal opinion and supporting documentation demonstrating the State has adequate back-up authority for all roads, highways and bridges management measures.

From 2001 to present, the changes to the Ohio program reflect the development and/or further explanation of specific programs and policies to meet the CZARA management measure requirements. Although the manner in which Ohio's program would meet the approval conditions were not known at the time the 2001 EA was published, NOAA and EPA had identified requirements for program approval, and the impacts were analyzed in the prior NEPA documents. The proposed agency action that Ohio has met all conditions of approvability placed on its program, (i.e., full approval) is simply a finding that a program satisfies the program requirements. The action does not vary from that analyzed in the EA.

IV. Considerations for Adequacy of Existing EA

Comparison of the range of alternatives analyzed and evaluated in the prior two NEPA analysis documents and the proposed action to find that Ohio has satisfied all conditions of approvability on its program (i.e., full approval):

The alternatives presented in this sufficiency analysis are generally the only ones available to both NOAA and EPA: full approval (i.e., approval without conditions or finding that a state has satisfied all conditions of approvability placed on its program), conditional approval, or disapproval (i.e., finding that a state has failed to submit an approvable program).

Comparison of Affected Environment

The geographic area and resource conditions of the affected environment have slightly evolved since the management area was analyzed in the existing NEPA document. Some of the characteristics of the affected environment have changed over time. For example, Ohio's coastal zone has seen a moderate increase in urban development and boating activities, and a decrease in population and agricultural activities. Although there have been some changes in the affected environment since the 2001 EA, the changes in coastal use trends and the evolution of the affected environment continue to provide adequate baseline information to support the findings in the 2001 EA that approval of the program will not have significant impacts on the environment.

A. The Physical Environment

1. The Ohio Coastal Nonpoint Program Management Area

The geographic area across which the Ohio coastal nonpoint program extends is the same as the geographic area analyzed in the original 2002 EA for the program. No conditions were placed on the coastal nonpoint program management area boundary proposed by Ohio. This area generally includes the entire Lake Erie watershed, which includes portions of 35 counties and covers an

area of 11,649 square miles.² The major stream basins within the Lake Erie watershed include the Maumee, Portage, Sandusky, Huron, Vermillion, Black, Rocky, Chagrin, Cuyahoga, Grand and Ashtabula. The designated area was found to be sufficient to control the land and water uses that have or are reasonably expected to have a significant impact on the coastal waters of Ohio. Therefore, there has been no change to the boundary of the management area.

2. Coastal Environment

For purposes of this sufficiency analysis, the coastal environment of Ohio has not substantially changed. At the time of the EA, Ohio had 262 miles of shoreline along Lake Erie.³ The total area of Lake Erie drainage basin is 30,140 square miles (78,062 square km), exclusive of surface area, which is 9,910 square miles.⁴ The western portion of the coast from Toledo to Huron is characterized by low-relief barrier beaches and numerous reefs, shoals, and rocky islands. This area is the most productive fish spawning and nursery ground in the Great Lakes and supports a commercial and sportfishing industry. The Lake Erie Western Basin and Sandusky Bay are considered critical spawning habitats for three strains of walleye. The coast from Huron to Conneaut is characterized by moderate-to-high relief shale and/or till slopes and bluffs. Lake Erie's beaches are usually narrow and composed mostly of sand, although cobble, pocket beaches are also found in rocky areas.

Lake Erie water levels vary naturally over time in cyclical fluctuations. This natural variation results from precipitation and evaporation in the basin, from inflow from the upper Great Lakes through the Detroit River, and outflow into the Niagara River. The fluctuating lake levels and development in shoreline areas has increased, causing flooding and erosion to the Lake Erie shoreline. This erosion of Ohio's shoreline is a serious problem, especially in areas of high bluffs and erodible sand, clay, and till. Recently, water levels of all of the Great Lakes have been above record levels.⁵

B. Terrestrial Environment and Land and Water Uses

This section provides a description of the terrestrial environment and the land and water uses and users in the Ohio coastal nonpoint program management area. The Ohio coastal nonpoint program management area supports extensive and varied commercial and recreational activities. As in 2001, the intensity and nature of land

² Counties covered include: Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, Ottawa, Sandusky, Allen, Ashland, Auglaize, Crawford, Defiance, Fulton, Geauga, Hancock, Hardin, Henry, Huron, Marion, Medina, Mercer, Paulding, Portage, Putnam, Richland, Seneca, Shelby, Summit, Trumbull, Van Wert, Williams, Wood, and Wyandot

³ 2001 Environmental Assessment for Ohio's Coastal Nonpoint Pollution Control Program

⁴ <https://www.britannica.com/place/Lake-Erie>

⁵ "Ohio offering help for coastline erosion because Lake Erie is at record high levels," Dan DeRoos, Channel 19, Feb. 18, 2020, available at <https://www.cleveland19.com/2020/02/18/ohio-offering-help-coastline-erosion-because-lake-erie-is-record-high-levels/> (last visited 11/4/21).

and water uses in many areas has the potential to threaten and degrade coastal water quality if good best management practices to control nonpoint source pollution are not employed. However, for the purpose of supplementation review, Ohio's terrestrial environment and land and water uses have not significantly changed.

1. Population Growth

Around the time of the 2001 EA, the estimated population of the 35 counties in Ohio's coastal nonpoint management area was 4,901,308.⁶ Today, the population of those 35 counties is 4,766,423, representing a decrease in the overall population.⁷ The most populous county in the coastal nonpoint management area is Cuyahoga county, with 1.235 million residents as of 2019.⁸

2. Social and Economic Activities

a. Agriculture

The combination of climate, soils and topography make Ohio a productive region for agriculture. Approximately seventy-three percent of the land in the Lake Erie Basin was used for agriculture at the time of the EA. According to the Ohio Department of Agriculture's 1997 Annual Report, there were 29,690 farms, with an average size of 211 acres, located in the 35 counties in the Ohio coastal nonpoint management area.⁹

Ohio's coastal nonpoint management area has seen a general decrease in agricultural activities in the past few decades. As of 2017, there are 28,434 farms in the Ohio coastal nonpoint management area, which is a decrease of 1,256 farms since the time of the 2001 EA.¹⁰ Ashtabula is the county with the most farms, with 1,212 farms in the county. Lorain, Medina, and Portage counties have seen the biggest increase in the number of farms since the early 2000s, with an increase of 15%, 21%, and 30%, respectively. However, most counties in the coastal nonpoint management area have seen a decrease in the number of farms. Wood county has the greatest number of farmland acres, with 268,800 acres. Most counties in the Ohio coastal nonpoint management area have much less acres in farmland compared to Wood county.¹¹

⁶ 2001 Environmental Assessment for Ohio's Coastal Nonpoint Pollution Control Program, citing U.S. Census Bureau, 2000

⁷ United States Census Bureau, Ohio (2019)

⁸ United States Census Bureau, Ohio (2019)

⁹ Ohio CNP, 1999

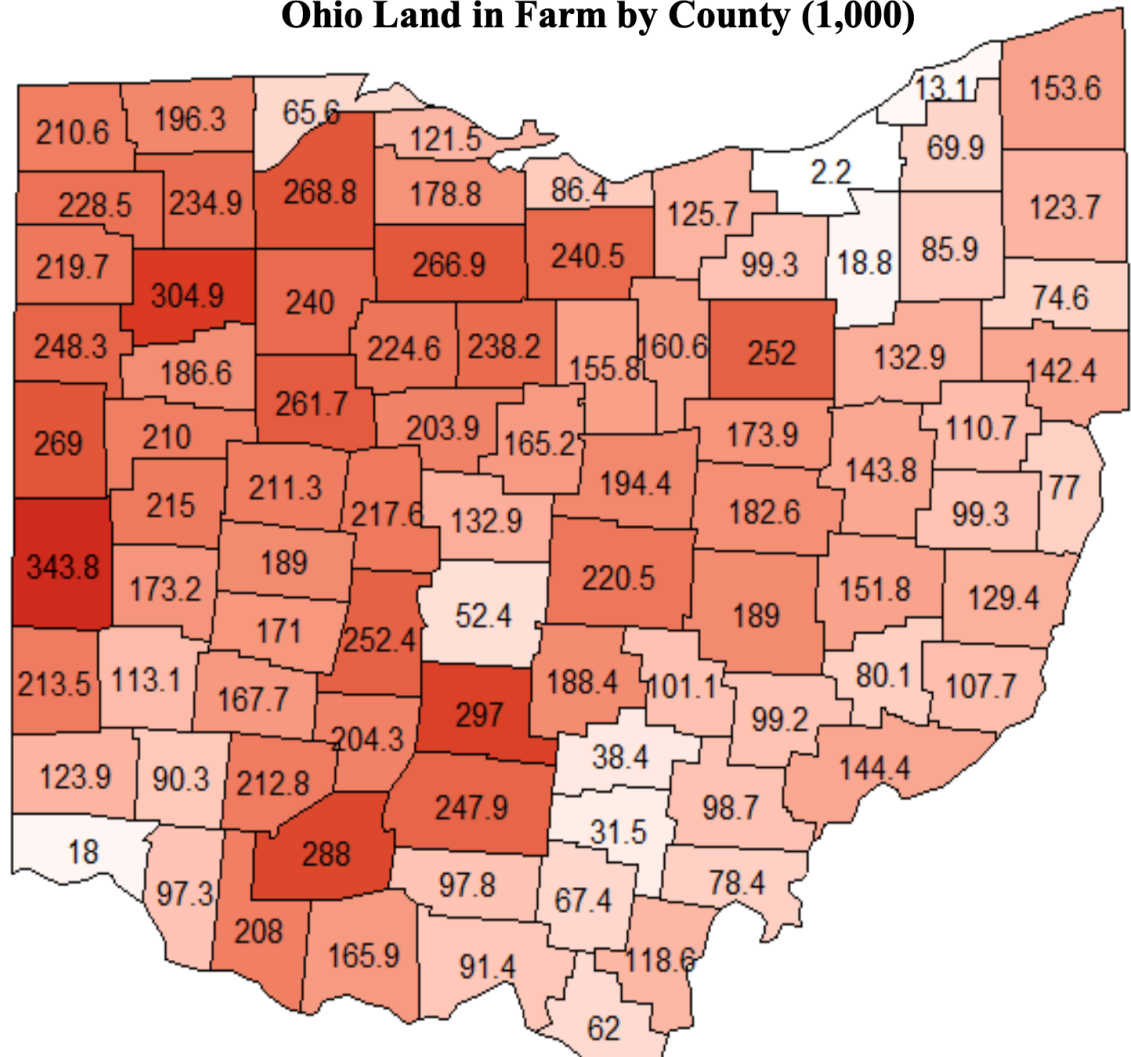
¹⁰

https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_2_County_Level/Ohio/st39_2_0001_0001.pdf

¹¹

https://aede.osu.edu/sites/aede/files/imce/images/Changes%20in%20Ohio%20Farms%20and%20Land%20Held%20in%20Farms%20from%20a%20Decade%20Ago_0.pdf

Ohio Land in Farm by County (1,000)



b. Forestry

Areas with forest cover and the potential for forest harvesting are fewer in the Lake Erie watershed than in Ohio as a whole. During the time of the EA, 30 percent of Ohio was forested, but only 18 percent of the Lake Erie watershed was forested. Ohio remains 30 percent forested, with 17.8% of the coastal nonpoint management area counties forested.¹² Ninety-six percent of Ohio's forest land (7.6 million acres) is timberland. Four percent (292,000 acres) is publicly-owned reserved forest land.¹³ Net volumes are increasing, though at a slower pace compared to years past.

¹² <https://coast.noaa.gov/ccapatlas/>

¹³ https://www.fs.fed.us/nrs/pubs/ru/ru_fs171.pdf

c. Urban

Residential development has increased in Ohio's coastal watershed in the past two decades. While not exactly equivalent to the coastal nonpoint boundary, the state's watershed boundary is a close approximation. In 2001, the Ohio coastal watershed contained approximately 1,203,024 housing units, with a housing density of 320.1 units per square mile.¹⁴ By 2019, housing development increased to 1,250,704 housing units in the Ohio coastal watershed, with a housing unit density of 332.8 units per square mile.¹⁵

d. Marinas

Based on 2001 licensing data, there were a total of 303 licensed marinas in Ohio located on the Lake Erie coastline at the time of the EA.¹⁶ Ohio ranked 9th in the United States in the number of boats registered, with 407,347 boats registered in the state.¹⁷ Boating activities remain to be a major use of Ohio's coastal waters. There are a total of 320 marinas in all of Ohio, and in 2019, Ohio ranked 6th in the United States in the number of boats registered, with a total of 586,159 registered boats.^{18,19}

Water Quality

Under the federal Clean Water Act (CWA), Ohio must adopt surface water quality standards for waters in the state, assess the status of water quality, and implement actions necessary to achieve and maintain those standards. The *Ohio Integrated Water Quality Monitoring and Assessment Report* (IR) summarizes water quality condition data in Ohio, satisfying water quality reporting requirements under Sections 303(d), 305(b), and 314 of the CWA. Waters not meeting the goals for one or more of the four types of water uses (aquatic life, recreation, human health, and public drinking) are referred to as impaired and are prioritized for restoration and research efforts. Results are filed for 1,538 watershed units, 38 large river units (in Ohio's 23 rivers that drain more than 500 square miles), and seven Lake Erie units.²⁰

For the "human health" use, mercury and polychlorinated biphenyl (PCB) contamination in fish are the leading causes of impairments in Ohio. The "recreation" use segment examines the amount of bacteria and algae in the water. Ohio's western basin shoreline, the western basin open water assessment units, and the island shoreline are

¹⁴ <https://www.oceaneconomics.org/Demographics/PHresults.aspx>

¹⁵ <https://www.oceaneconomics.org/Demographics/PHresults.aspx>

¹⁶ Ohio CNP, 14 (1999)

¹⁷ Ohio CNP, 14 (1999)

¹⁸ <https://marinas.com/browse/marina/US/OH/14>

¹⁹ <https://www.statista.com/statistics/1155988/us-recreational-boating-vessels/>

²⁰ Ohio 2020 Integrated Water Quality Monitoring and Assessment Report, Executive Summary - 1 (May 2020)

all listed as impaired by algae. Ohio's Sandusky basin and central basin open water units and central basin shoreline are in attainment.²¹

The top reasons for "aquatic life" impairment include habitat modification, hydromodification, sedimentation, siltation, and nutrient/organic enrichment for large rivers and watersheds. The primary impairments for the "public drinking water supply" use include chemicals such as nitrate, atrazine and cyanotoxin, found in the water as a result of nonpoint source runoff from agricultural land use, home and commercial fertilizer application, failing septic systems, unsewered areas, and wastewater treatment plant discharges. Of the 118 public drinking water supply assessment units, 39 are currently listed as impaired by algae, with another 25 on the watch list for algae.²²

In 2002, 62.5% of the monitored miles of Ohio's large river assessment units were in attainment.²³ That year, 905 miles of 22 rivers were assessed. In 2020, 88.2% of Ohio's large river assessment units were in attainment, with 1243 miles of 23 rivers analyzed.²⁴

Numerous county, regional, and state agencies play an important role in managing nonpoint source pollution in Ohio. These entities provide information about local water quality issues and help maintain management measures that are necessary to prevent and reduce nonpoint source pollution. Coordinating with these partners allows Ohio to effectively manage its water quality protection and restoration efforts.

The Ohio EPA Division of Surface Water is involved in several of the Lake Erie and Great Lakes initiatives that are being implemented by EPA, United States Department of Agriculture-Natural Resources Conservation Service, the Ohio Department of Natural Resources (ODNR), United States Geological Service, and other local, state and federal partners. In addition to Ohio's NPS Program, two Lake Erie specific programs exist that encourage implementation of Remedial Action Plans (RAPs) for the Maumee, Black, Cuyahoga and Ashtabula rivers and the continued development and implementation of a lake-wide action and management plan (LAMP) for restoring Lake Erie. These efforts help to reduce point and nonpoint source pollutants and restore all beneficial uses to the Great Lakes. Both programs, described in the Great Lakes Water Quality Agreement (GLWQA) between Canada and the United States, are mandated under the Great Lakes Critical Programs Act amendment to the Clean Water Act. The GLWQA was most recently revised in 2012 and Ohio EPA's NPS Section will be directly involved in implementing the new milestones and requirements contained in the agreement.²⁵

Local governments typically conduct planning to meet the sewage management needs of the community in order to prevent water contamination caused by improper waste disposal. Another example is the H2Ohio plan, unveiled by Governor Mike DeWine in

²¹Ohio 2020 Integrated Water Quality Monitoring and Assessment Report, Executive Summary - 1 (May 2020)

²²Ohio 2020 Integrated Water Quality Monitoring and Assessment Report, A-5 (May 2020)

²³Ohio 2020 Integrated Water Quality Monitoring and Assessment Report, Executive Summary - 1 (May 2020)

²⁴Ohio 2020 Integrated Water Quality Monitoring and Assessment Report, A-7 (May 2020)

²⁵ Ohio Nonpoint Source Management Plan Update, 66 (2014)

November 2019.²⁶ This plan is an investment in targeted solutions to help reduce phosphorus runoff and prevent algal blooms through increased implementation of agricultural best practices and the creation of wetlands; improve wastewater infrastructure; replace failing home septic systems; and prevent lead contamination in high-risk daycare centers and schools. The Ohio General Assembly invested \$172 million in the plan in July 2019 to support water quality improvements in the Lake Erie basin and other areas of the state under the plan.

In calendar years 2017 and 2018, the Water Pollution Control Loan Fund financed many municipal wastewater treatment needs as well as NPS pollution control needs. Through this program, \$1,469,500,811 in financing was provided for 338 projects, of which 215 projects were for municipal point sources and 123 projects assisted NPS controls.²⁷

Climate Change

The climate change issues most affecting Ohio include drought, extreme heat, and flooding. Extreme heat is causing ice cover on the Great Lakes to form later and melt sooner.²⁸ The Great Lakes are likely to warm another 3° to 7°F in the next 70 years, which will further extend the ice-free season. Between December 2018 and February of 2019, Ohio's winter was a full 6°F warmer than the average.²⁹ Global warming is also causing an increase in extreme precipitation throughout the Midwest. Ohio is experiencing more rain in the fall, winter and spring and less in the summer, causing drought-like summer conditions that impact growing crops.³⁰ Ohio's widespread summer drought severity is projected to increase by approximately 50 percent by 2050.³¹

In Lake Erie, the changing climate is likely to harm water quality. The warming water temperatures tend to cause more algal blooms, which can harm fish and degrade water quality. Algae can persist for weeks during summer by blooms carried eastward by winds and currents through the lake.³² In recent years, algal blooms have occurred more severely and frequently as a result of Ohio's rising temperatures. For example, in August 2014, an algal bloom in Lake Erie was so severe that it prompted the City of Toledo to ban drinking and cooking with tap water, leaving more than 400,000 people in the Toledo area without drinking water.³³

Storm activity also increases the amount of pollutants that run off from land to water, so the risk of algal blooms could increase if storms continue to intensify. Increasing rainstorms also cause sewers to overflow into the Great Lakes more often, carrying bacteria into the water basin, which threatens beach safety, the ecosystem, human

²⁶ <https://h2.ohio.gov/about-h2ohio/>

²⁷ http://epa.ohio.gov/Portals/29/documents/ofa/2018%20WPCLF%20PMP_Body-Appendices_10202017.pdf

²⁸ <https://www.tempestryproject.com/wp-content/uploads/2019/07/climate-change-oh.pdf>

²⁹ <https://www.dispatch.com/news/20200330/winter-was-among-warmest-on-record-in-ohio-world>

³⁰ <https://www.climaterealityproject.org/blog/how-climate-crisis-affecting-ohio>

³¹ <https://statesatrisk.org/ohio/all>

³² <https://www.epa.gov/greatlakes/lake-erie>

³³ <https://www.ecowatch.com/toxic-algae-bloom-leaves-500-000-without-drinking-water-in-ohio-1881940537.html>

health, and the supply of available drinking water for 12 million people in the United States and Canada.³⁴

Wetland loss

Since the time of the EA, approximately 68% of Ohio's coastal wetlands have been lost, with an average of 2% of wetland loss per county.³⁵ Wetlands act as a buffer to storm surge, so this loss of wetlands contributes to an increase in damage caused by increasing storm intensity and frequency. However, this effect on wetland habitats does not significantly alter the baseline information and findings in the 2001 EA that approval of the program will not have significant impacts on the environment.

Direct and Indirect effects comparison between the full approval analysis in this sufficiency analysis and the existing NEPA documents:

The direct and indirect effects of full approval of the Ohio program (i.e., finding that the state has satisfied all conditions of approvability on its program) are similar qualitatively and quantitatively to the effects of full approval discussed in the 1996 PEIS and the 2001 Ohio EA. The programs, initiatives and other components proposed for inclusion in the Ohio coastal nonpoint program are already operating, independent of the NOAA-EPA proposed action. The elements of the coastal nonpoint program are supported by enforceable policies and mechanisms that will remain in effect regardless of the federal action. Thus, there are limited direct impacts of the federal action itself, particularly now that there is no longer a dedicated funding source for coastal nonpoint programs.

The indirect effects of activities falling under the umbrella of the coastal nonpoint program have beneficial effects to the natural and socioeconomic environment. For more information about these effects, see Section 4 of both the PEIS and the Ohio EA. The funding levels available to Ohio for coastal management and water quality initiatives will not change as a result of full program approval (i.e., finding that Ohio has satisfied all conditions of approvability on its program). If NOAA and EPA were to find that Ohio had failed to submit an approvable program (i.e., disapprove the program), a 30 percent reduction in CZMA Section 306 coastal zone management and CWA Section 319 nonpoint source management funding would have indirect adverse effects on the physical, biological, and socioeconomic environments because it would reduce investments in efforts to manage coastal uses and improve water quality. The state's CZMA Section 306 funding supports overall implementation of the state's coastal zone management program. While not all activities supported through CZMA Section 306 funds are directly related to water quality and coastal habitat, the Ohio coastal management program often supports efforts every year related to coastal water quality. These initiatives, as well as other initiatives of the coastal management program related to coastal resilience, public access and other coastal management issues may also have to be reduced. The state's CWA section 319 funding is used to fund eligible projects that reduce pollutant loads and improve water quality, including installation of

³⁴ <https://www.tempestryproject.com/wp-content/uploads/2019/07/climate-change-oh.pdf>

³⁵ <https://coast.noaa.gov/ccapatlas/>

best management practices that reduce the transport of pollutants to waterbodies. If the state's CWA Section 319 funding is reduced, Ohio would have to cut the number of projects that improve water quality and reduce nonpoint source pollution it is able to support.

NOAA and EPA's proposed finding that Ohio has satisfied all conditions of approvability on its program (i.e., full program approval) signifies that Ohio has demonstrated that it has met all coastal nonpoint program requirements, including that it has in place programs and processes to implement the 6217(g) management measures. This continued implementation and funding of Ohio's nonpoint program translates to continued beneficial effects to water quality as discussed in the EA. Also, as noted in the EA, both conditional and full approval of the Ohio coastal nonpoint program help make existing programs more effective by continuing to strengthen the link between federal and state coastal zone management and water quality programs in Ohio. Thus, the various direct, indirect, and cumulative effects resulting from implementation of the new proposed action are similar to those analyzed in prior NEPA documents, including the 2001 EA.

Analysis of Cumulative Impacts

Cumulative impacts, as defined in NEPA, are the impacts from the proposed action, when added to other past, present, and reasonably foreseeable future actions affecting the same geographic range or area of potential effect. In addition to the discussion on environmental impacts from the proposed action, cumulative impacts, in particular, assist stakeholders to understand the complete picture of what is taking place in the project area because it looks at not just the impacts from the proposed action, but also impacts from all other actions, including non-governmental projects.

There are many programs, regulations, and projects in Ohio that are designed to reduce nonpoint source pollution, a number of which are incorporated in the Ohio Coastal Nonpoint Source Pollution Control Program.

For example, H2Ohio is a water quality initiative that aims to strategically address issues in Ohio water bodies. This initiative assesses solutions to problems such as harmful algal blooms on Lake Erie caused by phosphorus runoff from farm fertilizer. H2Ohio has encouraged adoption of effective and cost-efficient practices to reduce agricultural phosphorus runoff. H2Ohio and the Ohio Department of Agriculture provide incentives to farmers who develop a nutrient management plan, which utilizes soil testing data to help farmers understand the quality status of their farmland. Additionally, the Ohio Agricultural Conservation Initiative created a widely supported farmer certification program and a best management practice program to promote conservation practices.

Another example of a program assisting with nonpoint source pollution in Ohio is the Water Pollution Control Loan Fund, which has financed many nonpoint source control projects. Through this program, \$1,469,500,811 in financing was provided for 338 projects, of which 215 projects were for municipal point sources and 123 projects

assisted NPS controls.

The 6217(g) management measures are designed to reduce and/or prevent polluted runoff, thus limiting stress caused by poor water quality on resources and local communities within the coastal nonpoint management area. While the programs that comprise Ohio's coastal nonpoint program may cause limited cumulative effects on coastal communities, industries, and other entities that must incur additional costs to implement management measures, such as those related to agriculture runoff management and stormwater management. However, government agencies and individuals have been subject to economic costs related to administering water quality and environmental management programs (including the coastal nonpoint program) for years. In addition, the programs that comprise the coastal nonpoint program already exist and are being implemented and will continue to be implemented at the federal, state or local level regardless of NOAA and the EPA's finding that Ohio has met all conditions of approvability on its coastal nonpoint program (i.e., full approval). Therefore, NOAA and EPA's action to find that Ohio has satisfied all conditions of approvability on its coastal nonpoint program would not create any additional cumulative effects.

NOS concludes that the proposed action and the effects of implementing Ohio's coastal nonpoint program will improve water quality and increase the potential for resources to sustain themselves. Further, NOS concludes that the action, when added to the other past, present, and reasonably foreseeable future actions within the coastal nonpoint program area will not significantly alter the ecosystem or have an adverse effect. Additionally, the proposed action, when combined with other actions, will not affect the potential for any resources in the coastal nonpoint management area to sustain themselves in the future. Therefore, NOS concludes that cumulative impacts to the proposed action, as defined under NEPA are not significant.

V. PUBLIC REVIEW

On September 28, 2001, NOAA and EPA announced a 30-day public comment period on the proposed approval findings, with conditions, EA, and FONSI for the Ohio coastal nonpoint program (66 FR 49643). Thus, the public has already been given one opportunity to comment on the environmental consequences of the action that is currently being proposed. On November 3, 2021, NOAA and EPA announced in the Federal Register a proposed decision that Ohio has satisfied all conditions of approvability placed on its coastal nonpoint program for a 30-day public comment period (i.e., full approval) (86 FR 60616). No comments were received. Thus, NOAA and EPA have provided multiple opportunities for public engagement, and the public has received sufficient notice and opportunity to comment on the proposed action.

VI. CONCLUSION

NOS has determined that there is not a need to supplement the existing Ohio coastal nonpoint program EA. The changes to the proposed action and the new information and circumstances do not suggest the proposed action will result in significant adverse

impacts, and the anticipated impacts of the action currently proposed are the same as those that were considered in the Ohio EA. The 2001 EA continues to provide supporting analysis to support a finding of no significant impact for the proposed finding that Ohio has satisfied remaining conditions of its coastal nonpoint program.

VII. FINDING OF NO SIGNIFICANT IMPACT

Pursuant to section 6217 of Coastal Zone Act Reauthorization Amendments, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) propose to find that Ohio has satisfied all conditions of approvability placed on its coastal nonpoint pollution control program. In addition to the preferred alternative, NOAA and EPA considered Ohio additional alternatives: disapproval, and no action. The Final Environmental Assessment (EA) prepared to evaluate potential consequences associated with approving and implementing the Ohio Coastal Nonpoint Pollution Control Program concluded that finding that Ohio has satisfied all conditions of approvability on its coastal nonpoint program (i.e., full approval) will not result in any significant environmental impacts different from those analyzed in the 1996 Programmatic Environmental Impact Statement (PEIS) for the Coastal Nonpoint Pollution Control Program, which resulted in a Finding of No Significant Impact (FONSI). The EA was tiered off the 1996 PEIS and focused on information specific to Ohio. The analysis in the EA indicates that potential environmental effects from full approval and implementation of the proposed Ohio program (the preferred alternative) would not be significant individually or cumulatively. Thus, preparation of a Finding of No Significant Impact (FONSI) is warranted.

NOAA uses eleven criteria for determining the significance of the impacts of a proposed action. These criteria are discussed below as they relate to the proposed project. Each criterion is discussed below with respect to the proposed action and considered individually, as well as in combination with the others.

a. Has the agency considered both beneficial and adverse effects? (A significant effect may exist even if the Federal agency believes on balance the effect will be beneficial.)

The agency has considered both beneficial and adverse effects, and no significant adverse effects are anticipated. The primary beneficial effects of the Ohio Coastal Nonpoint program relate to the improvement of Ohio's water quality. Ohio also expects the program to promote an improved coastal habitat, improved public health, increased aesthetic value of coastal areas and enhanced recreational opportunities as a result of cleaner water and healthier coastal habitats.

b. To what degree would the proposed action affect public health and safety?

The proposed approval decision would not be anticipated to have significant impacts on public health or safety because it would not alter any Ohio programs already in

operation. Additionally, the implementation of management measures reduces nonpoint source pollution generation from a variety of sources and minimizes the delivery of pollutants into Ohio's land, surface water, and groundwater, which could result in minor improvements to public health and safety due to cleaner coastal waters.

c. To what degree would the proposed action affect unique characteristics of the geographic area in which the proposed action is to take place?

None. Though there are unique places within the Ohio coastal nonpoint management area, the proposed action will not affect its unique characteristics because it does not create any new programs or initiatives. Finding that the state has satisfied all conditions of approval placed on its coastal nonpoint program does not create new programs or policies that change how Ohio already manages nonpoint source pollution; the programs and policies that comprise Ohio's coastal nonpoint program already exist and are being implemented by state, local, and other entities regardless of NOAA and EPA's action.

d. To what degree would the proposed action have effects on the human environment that are likely to be highly controversial?

The effects of the proposed action on the human environment are not likely to be highly controversial. No public comments were received during the public comment period for Ohio's proposed approval, with conditions, findings and draft EA. The programs and authorities that comprise Ohio's Coastal Nonpoint Program are already in existence and being implemented at the state and local level and will continue to be implemented regardless of NOAA and EPA's action. Therefore, NOAA and EPA's action will not create any additional effects on the human environment beyond what is already occurring in absence of the action.

While NOAA and EPA's proposed action would allow Ohio to be eligible for future funding (if appropriated) to implement its coastal nonpoint program, any potential effects of that future funding on the human environment are unknown and speculative at this time. NOAA has mechanisms in place for evaluating any effects on the human environment if and when a future funding decision is made.

e. What is the degree to which effects are highly uncertain or involve unique or unknown risks?

None. There are no uncertain, unique, or unknown risks associated with the proposed finding that Ohio has satisfied all conditions of approvability on its coastal nonpoint program. The Ohio Coastal Nonpoint Program consists entirely of existing state and local requirements, as well as voluntary educational and participatory activities, which do not have uncertain, unique, or unknown risks.

f. What is the degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

None. NOAA and EPA evaluate individually each proposed coastal nonpoint program by carefully reviewing all materials submitted by any approved state or territory with conditions on their program to evaluate whether the information provided addresses applicable conditions of approvability. The finding that Ohio has satisfied all conditions of approvability on its coastal nonpoint program does not have any bearing on whether NOAA and EPA will make similar findings of programs in other jurisdictions. Thus, this action does not establish a precedent for future actions or represent a decision in principle about a future consideration.

g. Does the proposed action have individually insignificant but cumulatively significant impacts?

No, this action would not have any individually insignificant but cumulatively significant impacts. A finding that a state has satisfied all conditions of approvability on its coastal nonpoint program would facilitate continued investments in addressing coastal nonpoint pollution in Ohio. These investments and other endeavors identified as components of the Ohio Coastal Nonpoint Program would be expected to give Ohio improved control of sources of nonpoint pollution and result in reduced pollutant levels entering coastal waters, improved water quality, and enhanced coastal habitat. The Ohio Coastal Nonpoint Program has beneficial impacts on the physical, biological, and socioeconomic environment in Ohio. Potential adverse effects would not exceed the ability of human or natural communities to withstand stress. Thus, neither the incremental effects of a finding that Ohio has satisfied all conditions of approvability nor program implementation will have individually or cumulatively significant effects.

h. What is the degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources?

None. Issuing a finding that Ohio has satisfied all conditions of approval on its coastal nonpoint program is a federal action that would have no potential to affect historic properties or significant scientific, cultural, or historic resources in Ohio because it is an administrative action. Prior to approving or providing funding (typically under the Coastal Zone Management Act) for other types of specific activities in Ohio that address coastal nonpoint pollution, NOAA's Office for Coastal Management evaluates environmental compliance needs and ensures compliance with NHPA and all other applicable requirements. For example, targeted consultations under NHPA are conducted for those activities that have the potential to cause an adverse effect on historic properties. At that time, NOAA can provide to the Ohio State Historic Preservation Office, Ohio History Connection, the site-specific details necessary to fully analyze the effects of specific actions to historic properties.

i. What is the degree to which endangered or threatened species, or their critical habitat, as defined under the Endangered Species Act of 1973, are adversely affected?

None. Finding that Ohio has satisfied all conditions of approval on its coastal nonpoint program would have no effect on threatened and endangered species or their critical habitat. Projects aimed at managing, quantifying, and controlling coastal nonpoint pollution funded by NOAA under the Coastal Zone Management Act are evaluated individually with respect to their potential to affect resources protected pursuant to the Endangered Species Act; appropriate procedures are followed if there is a need to consult with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

j. Does the proposed action have a potential to violate federal, state, or local law for environmental protection?

No. Finding that Ohio has satisfied all conditions of approval on its coastal nonpoint program does not have the potential to violate federal, state, or local law. Federally-supported projects intended to reduce coastal nonpoint pollution are required to comply with all applicable federal, state, and local laws, including those for environmental protection. Given project review at the state and federal level, no violation of environmental protection laws is threatened.

k. Will the proposed action result in the introduction or spread of a non-indigenous species?

No. Finding that Ohio has satisfied all conditions of approval on its coastal nonpoint program will not result in the introduction or spread of any non-indigenous species. The components of the program are already in place and are being implemented at the state and local level regardless of the federal action. Neither the components identified as planned parts of the Ohio Coastal Nonpoint Program nor federally-supported nonpoint pollution reduction projects would be expected to introduce any invasive species because they would be subject to federal and state requirements and best management practices intended to reduce the spread of non-indigenous species. The Ohio Department of Natural Resources, other state agencies, and other entities are involved in invasive species management.

Finding of No Significant Impact

State of Ohio Coastal Nonpoint Pollution Control Program

Analysis of Full Approval Decision

In view of the information and analysis presented in the attached Environmental Assessment evaluating consequences related to the federal action about the Ohio Coastal Nonpoint Pollution Control Program, it is hereby determined that finding that Ohio has satisfied all conditions of approvability on its program will not significantly impact the quality of the human environment, as described above and in the supporting Programmatic Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

Keelin S. Kuipers
Deputy Director
Office for Coastal Management

Date

ATTACHMENTS:

- Original PEIS
- EA/FONSI for Conditional Approval of Ohio program
- Conditional Approval Findings
- Findings that Ohio Has Satisfied All Conditions of Approvability